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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/765,391

01/28/2004

Anthony Di Bitonto

B0224.0079

2535

32172 7590 08/10/2009  
DICKSTEIN SHAPIRO LLP  
1633 Broadway  
NEW YORK, NY 10019

EXAMINER

NGUYEN, PHONG H

ART UNIT

PAPER NUMBER

3724

MAIL DATE

DELIVERY MODE

08/10/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/765,391	<b>Applicant(s)</b> DI BITONTO ET AL.	
	<b>Examiner</b> PHONG H. NGUYEN	<b>Art Unit</b> 3724	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 18 May 2009.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,5-8,16,17,20 and 22-29 is/are pending in the application.
- 4a) Of the above claim(s) 16 and 28 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,5-8,17,20,22-27 and 29 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 December 2008 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 5-8, 17, 20, 22-27 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chen (4,614,031) in view of Litton (Des. 392,419).

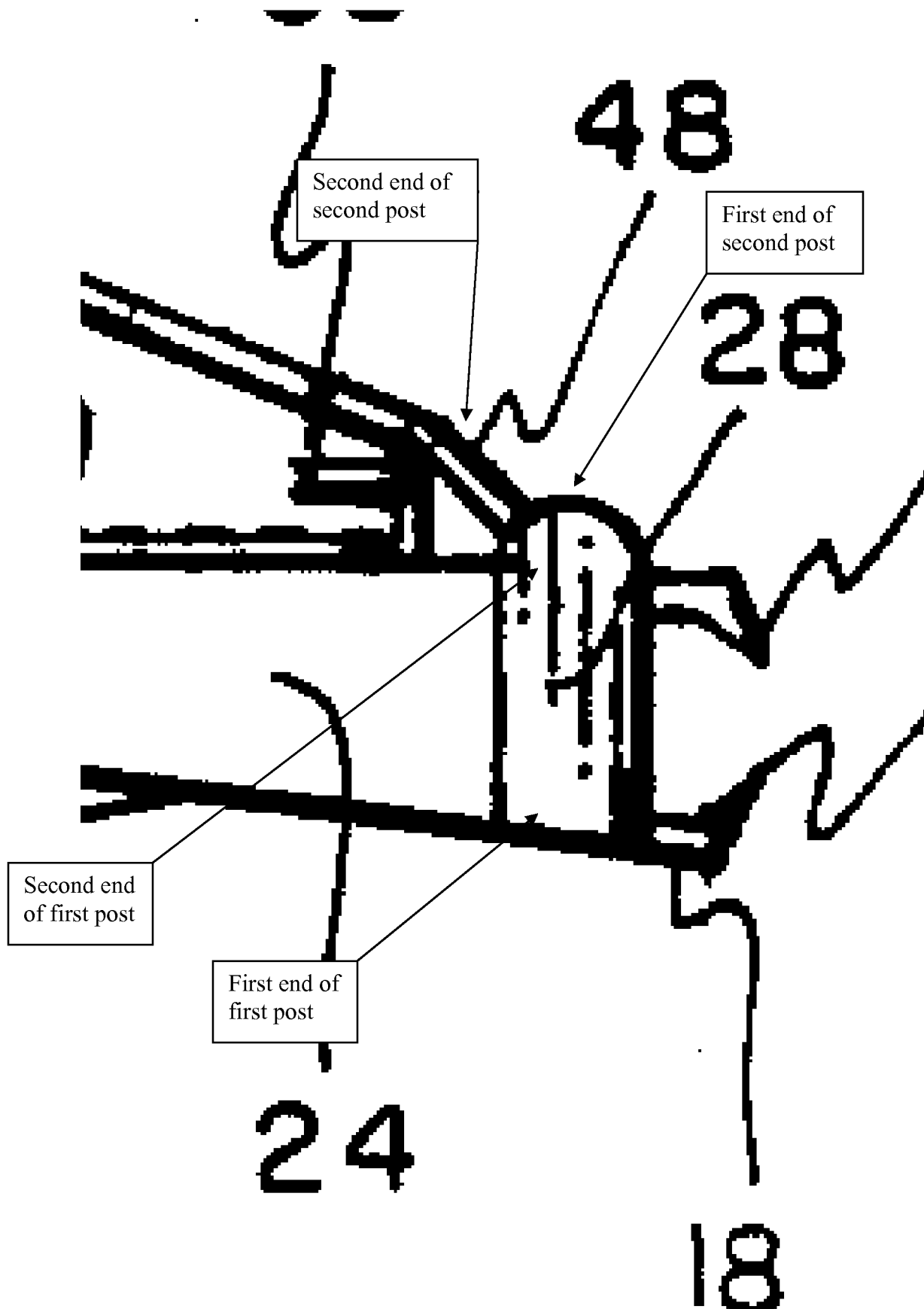
Regarding claims 1 and 23, Chen teaches a nail clipper comprising a top elongated member 32 and a bottom elongated member 18 forming cutting edges (20 and 40), a lever 44, a first post 28, and a second post 48 (it is to be noted that since the Applicant calls a plate a post, the Examiner considers plate 48 a post), wherein a second end of the first post is connected to a first end of the second post through a hinge (30, 50), and wherein a second end of the second post is located above the first end of the second post. See Figs. 1, 2 and 7.

Chen does not teach a bumper on the bottom surface of the bottom member 18.

Litton teaches providing a bumper on the bottom surface of a bottom member for comfortably holding the nail clipper. See Fig. 1.

Therefore, it would have been obvious to one skilled in the art at the time the invention was made to provide a bumper as taught by Litton to the bottom surface of the bottom member of Chen so that one can hold the nail clipper comfortably.

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Regarding claims 5, 20, 24 and 25, a section of the bumper having a triangular shape is best seen in Fig. 1 in Litton.

Regarding claims 6 and 26, Chen teaches the invention substantially as claimed except for the lever having a thumb accepting depression.

Litton teaches providing a thumb accepting depression on the lever for comfortably holding the nail clipper. See Fig. 1.

Therefore, it would have been obvious to one skilled in the art at the time the invention was made to provide a thumb accepting depression as taught by Litton to the lever of Chen so that one can hold the nail clipper comfortably.

Regarding claims 7, 8 and 27, the cutting edges being disposed at an angle to a central longitudinal axis of the top and bottom elongated members are best seen in Fig. 1 in Chen.

Regarding claims 17 and 29, the top and bottom elongated members not being interconnected at the distal ends (at the lower left of element 42) are best seen in Fig. 1 in Chen.

Regarding claim 22, Chen teaches a nail clipper comprising a top elongated member 32 and a bottom elongated member 18 forming cutting edges (20 and 40), a lever 44, a first post 28, and a second post 48 (it is to be noted that since the Applicant calls a plate a post, the Examiner considers plate 48 a post), wherein a second end of the first post is connected to a first end of the second post through a hinge (30, 50), and wherein a second end of the second post is located above the first end of the second post. See Figs. 1, 2 and 7.

Chen does not teach a bumper on the bottom surface of the bottom member 24.

Litton teaches providing a bumper on the bottom surface of a bottom member for comfortably holding the nail clipper. See Fig. 1.

Therefore, it would have been obvious to one skilled in the art at the time the invention was made to provide a bumper as taught Litton to the bottom surface of the bottom member of Chen so that one can hold the nail clipper comfortably.

### ***Response to Arguments***

3. Applicant's arguments filed 05/18/2009 have been fully considered but they are not persuasive.

The Applicant argues that the combination of Chen and Litton does not teach the limitation of the second end of the second post being located above the first end of the second post, and the first end of the second post being connected to the second end of the first post by a hinge. This argument is not persuasive. Chen and Litton teaches the limitation of the second end of the second post being located above the first end of the second post, and the first end of the second post being connected to the second end of the first post by a hinge. See the new interpretation of the first end and the second end of the first post, the first end and the second end of the second post, and the hinge in the rejection of claims 1, 22 and 23.

### ***Conclusion***

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to PHONG H. NGUYEN whose telephone number is (571)272-4510. The examiner can normally be reached on Mon-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Boyer Ashley can be reached on 571-272-4502. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business

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Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Phong H Nguyen/  
Examiner, Art Unit 3724  
August 7, 2009